



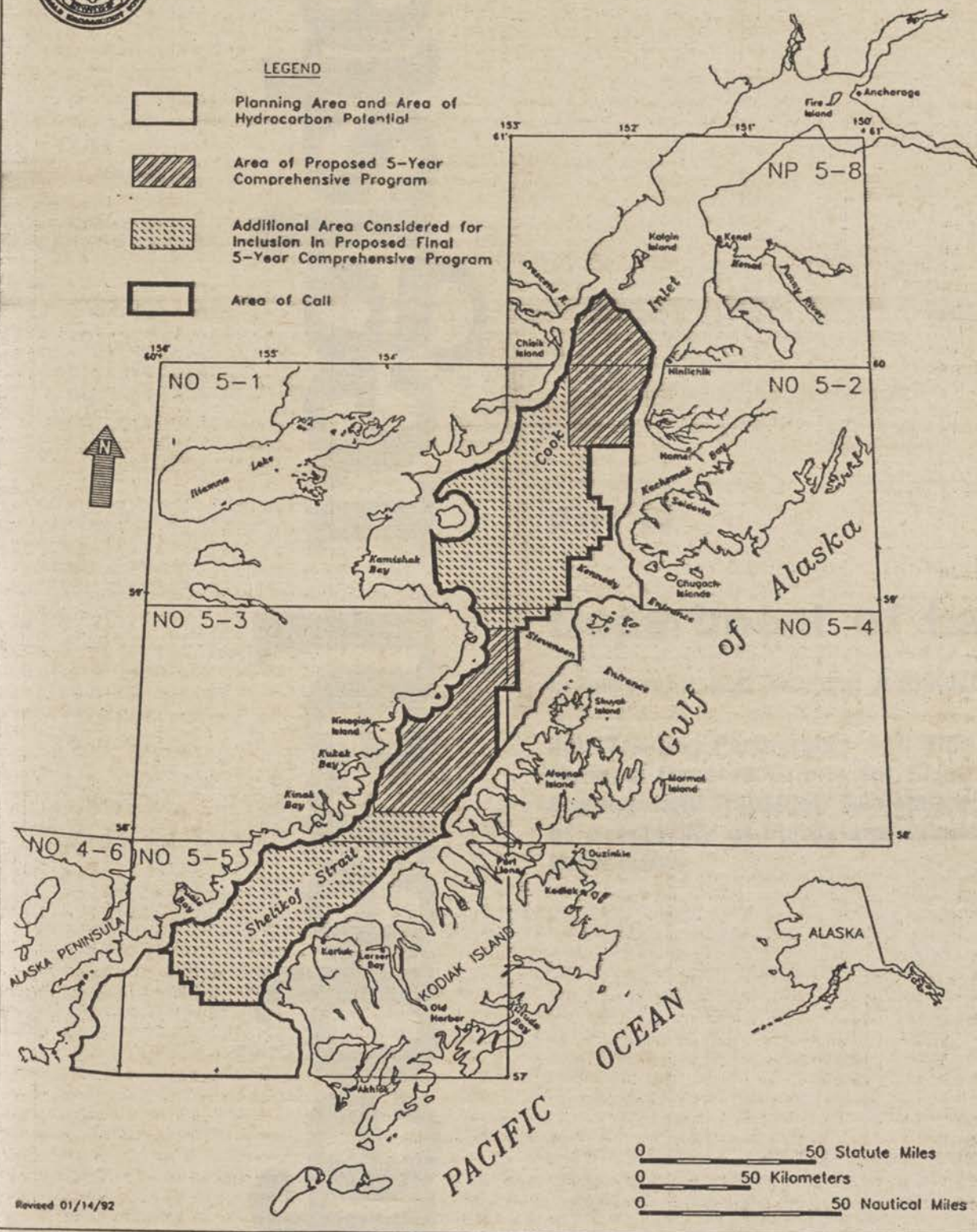




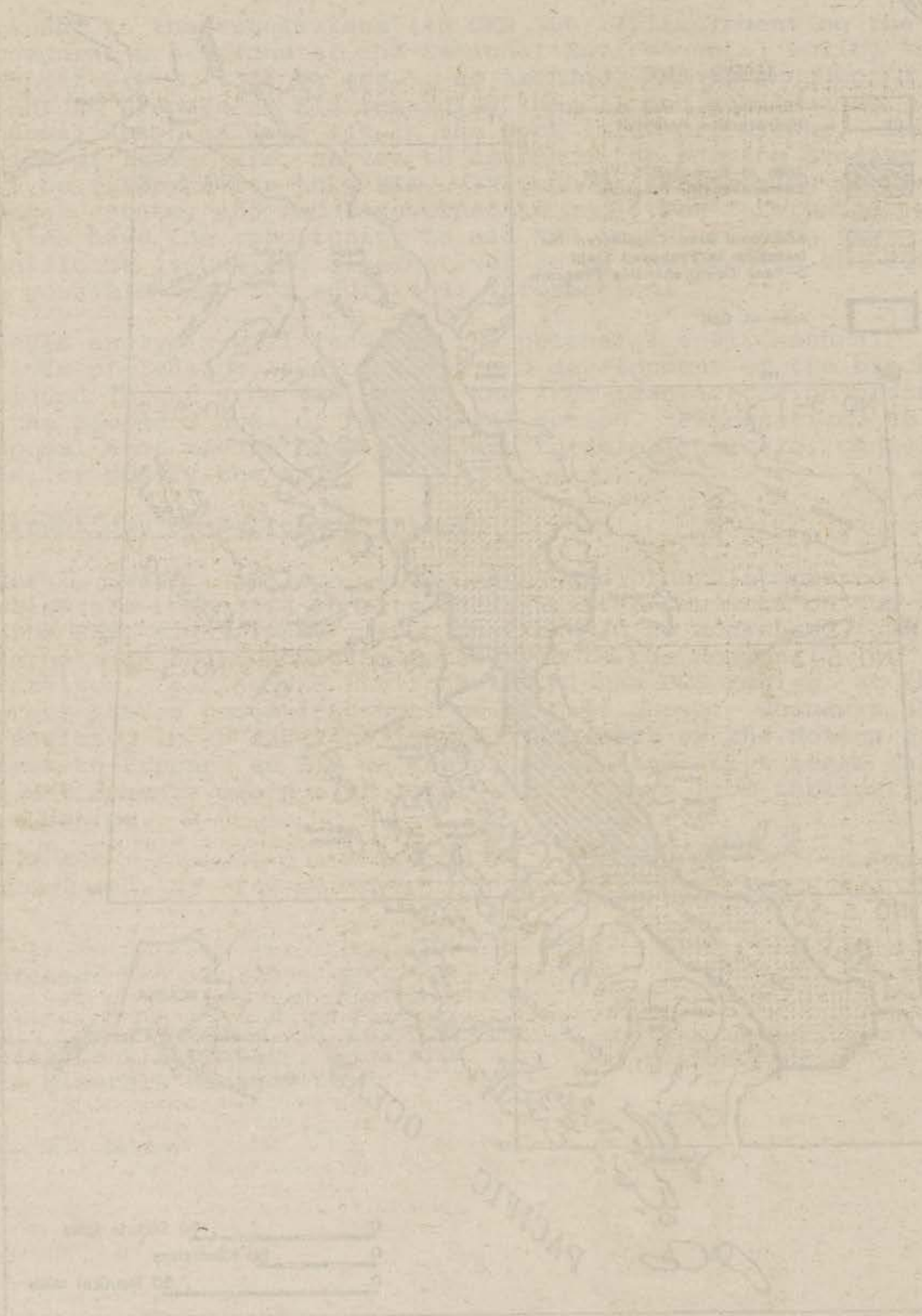
LEGEND

-  Planning Area and Area of Hydrocarbon Potential
-  Area of Proposed 5-Year Comprehensive Program
-  Additional Area Considered for Inclusion in Proposed Final 5-Year Comprehensive Program
-  Area of Call



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Friday
February 7, 1992

Part IV

Department of Labor

Employment and Training Administration

**Job Training Partnership Act: Title III
National Reserve Grants for Clean Air
Employment Transition Assistance; Notice
of Availability of Funds and Application
Procedures**

DEPARTMENT OF LABOR**Employment and Training Administration****Job Training Partnership Act: Title III National Reserve Grants for Clean Air Employment Transition Assistance; Availability of Funds and Application Procedures for Program Years 1991 and 1992**

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Employment and Training Administration of the Department of Labor is announcing that funds are available for a new Clean Air Employment Transition Assistance (CAETA) grant program. All applications prepared and submitted pursuant to these guidelines and received at the address below will be considered. Grant awards will be made only to the extent that funds are now available. Funds are now available for obligation for this new program from October 1, 1991 through June 30, 1993.

DATES: Applications will be accepted on an ongoing basis throughout the balance of Program Year 1991 and Program Year 1992 (July 1, 1991 through June 30, 1993) as the need for funds arises at the State and local level. Grant awards will be made during the Program Years in response to the applications received. There is no closing date for applications under this announcement.

ADDRESSES: It is preferred that applications be mailed. Mail or hand deliver applications to: Office of Grants and Contracts Management, Division of Acquisition and Assistance, Employment and Training Administration, U.S. Department of Labor, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Dislocated Worker Grants, Barbara J. Carroll, Grant Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retaining and Adjustment Programs. Telephone: (202) 535-0577. (This is not toll free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds reserved by the Secretary of Labor for the delivery of dislocated worker services to workers whose dislocation occurred as a consequence of an employer's compliance with the Clean Air Act, and the procedures to make application for these funds. Funding is authorized by the Job Training Partnership Act (JTPA

or Act). The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with the JTPA regulations 20 CFR 631.61.

This program announcement consists of four parts. Part I provides the background and purpose of the discretionary funds for activities under section 326 of the Act. Part II establishes basic U.S. Department of Labor (Department or DOL) policies and emphases for these discretionary grants. Part III describes the basic grant application process. Part IV provides detailed guidelines for the preparation of applications. The primary selection criteria used in reviewing applications are also included.

The JTPA Title III program is listed in the Catalogue of Federal Domestic Assistance at No. 17-246 "Employment and Training Assistance—Dislocated Workers" (JTPA Title III Programs).

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Part I. Background*A. Fund Availability*

Funds available for Clean Air Employment Transition Assistance (CAETA) programs total \$50 million and shall be awarded pursuant to the requirements contained in the JTPA and these guidelines. These funds are in addition to funds appropriated for the basic Title III program.

B. Circumstances Under Which Services May Be Provided With CAETA National Reserve Funds

Services described in JTPA section 314 may be provided with CAETA national reserve funds where there is a dislocation resulting from requirements of the Clean Air Act. (42 U.S.C. 7401 *et seq.*)

Part II. Department of Labor Policy and Program Emphasis*A. Basic Policies*

1. Available funds shall be awarded by the Secretary in a manner that efficiently targets resources to areas most in need, and in a manner which promotes effective use of funds.

2. All projects and activities funded shall be subject to the applicable provisions of JTPA, the appropriate regulations, and to the requirements contained in these instructions and the Grant Officer's award document(s) and any subsequent grant amendment authorized. All applications shall also be subject to Clean Air Employment Transition Assistance Program regulations once such regulations are published in final.

3. CAETA funds shall not be considered as an ongoing source of funds for existing centers or other projects or activities. For this reason, it is a general policy of the Department that it will not refund CAETA national reserve projects. Projects involving extraordinary circumstances, such as massive continuing layoffs, may be considered for refunding.

4. CAETA national reserve funds are not to be used to subsidize a grantee's ongoing operations. A grantee may only be reimbursed for costs over and above those costs associated with the grantee's ongoing costs. It is the Department's position that where CAETA national reserve funded projects are operated by existing State or substate grantees, administrative savings will be realized.

Note: "Substate grantee" is defined at JTPA section 301.

5. CAETA national reserve funds shall only be provided to meet needs which cannot be met by JTPA formula funds or other State and local resources. Grants will be primarily awarded, therefore, where substantial numbers of workers, relatively speaking, in a substate area, labor market, region or industry are dislocated as a consequence of a firm's compliance with the Clean Air Act and the State and/or substate area do not have sufficient JTPA funds available to assist such workers.

Note: "Substate area" is defined at JTPA section 301.

6. Eligible dislocated workers to be served with CAETA national reserve funds shall meet the requirements of part IV, section 1(b) of these guidelines.

7. The Department shall make every effort to review and respond to each application within 45 days of the Department's receipt of the application.

8. No grant funds awarded shall be used to reimburse costs incurred prior to the date authorized by the Grant Officer.

B. Secretary's Rights Reserved

The Secretary reserves the right to distribute some CAETA national reserve funds in a manner other than that provided by this notice, consistent with the JTPA, and taking into consideration special circumstances and unique needs which may arise throughout the course of the program year.

The Secretary also reserves the right to fund individual projects on an incremental basis where the Department determines that such an action would result in the most effective use of available resources.

If insufficient applications are received by the Department which are of acceptable quality and which meet the guidelines and selection criteria contained in this notice to exhaust the CAETA national reserve account, the Department shall take whatever action it deems necessary and appropriate, consistent with the Act and the regulations, to exhaust the funds.

C. Basic Planning Rules

1. Operating Definition of "State"

For purposes of these grant application procedures, State shall mean one of the 50 States of the United States and the following nine grant eligible territories and legal jurisdictions: The District of Columbia, The Commonwealth of Puerto Rico, The Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Trust Territory of the Pacific Islands/ Republic of Palau, while not "States" under the Clean Air Act (See 42 U.S.C. 7602 (d)(1)), are eligible to receive grants under this program, since Clean Air impacted individuals may reside in those areas.

2. Allocation of Costs

a. *State administration.* States may include no more than 1.5 percent or \$15,000, whichever is lower, for State administration of "pass-through" grants. State administrative cost requests that

are above this established set-aside must be accompanied by a justification showing the projected person-hours and functions to be performed and any other relevant cost information. This cost is to be included in the administrative cost category. It is expected that these funds will be used for subgrant administration, the provision of technical assistance, on-site and desk monitoring, and data collection.

States must provide specific information regarding why State 40 percent funds are not available to support a project.

b. *Administrative requirements for grant projects.* (1) In addition to applicable administrative requirements contained in JTPA and these guidelines, some grantee organizations may be subject to other requirements as listed below:

(a) State and local Governments (except for JTPA grant recipients under the Federal, State, Governor-Secretary Agreement block grant)—OMB Circular A-87 (cost principles) and 29 CFR part 97 (Uniform Administrative Requirements for Grants with State and Local Governments) apply. The audit requirements at 29 CFR part 96 also apply.

(b) Non-Profit Organizations—OMB Circulars A-122 and A-133 (Audits) apply.

(c) Educational Institutions—OMB Circulars A-21 and A-133 (Audits) apply.

(d) Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 apply.

(2) Any planned equipment purchases with a unit cost of \$500 or more must be justified and specifically listed along with its purchase price in the grant application. If equipment purchased is to be prorated, the total cost and the CAETA grant's share of the total cost must be indicated. Equipment planned to be leased and the cost of such equipment must be listed in the grant application.

c. *Establishment of a Labor Management Committee.* Costs associated with the establishment of a Labor Management Committee are appropriately charged as Rapid Response costs against the State's 40 percent Title III formula funds. Therefore, they are not to be charged to the CAETA grant. Ongoing operational costs of the Labor/Management Committee during the period of performance of the grant are chargeable to the Administration Cost category.

d. When a participant is eligible for either partial or full reimbursement of training costs (e.g., Pell grants, employer tuition reimbursement, etc.) the

application must describe the procedures established for the reimbursement and/or crediting of such costs if such costs are initially charged to the CAETA national reserve grant.

Note: Where CAETA national reserve funds are expended for training prior to certification of TAA eligibility, CAETA national reserve funds shall not be reimbursed to the JTPA program when TAA funds become available to cover the balance of the training.

e. *Necessary and reasonable costs/cost effectiveness.* In accordance with 20 CFR 629.37(a), costs are required to be "reasonable" and "necessary" to be charged to the grant. In reviewing a grant application, the Grant Officer shall consider these criteria. Areas of concern include but are not limited to: Staff to participant ratios; the proportion of staff costs to the total grant; the cost of purchased or leased equipment; the cost of proposed training as it relates to the complexity of the skills to be learned, the length of training, and the provider's access to other supplemental funding sources. The extent to which the proposed project budget reflects costs that appear to be "reasonable" and "necessary" will be a significant factor in determining the project's cost effectiveness.

f. All indirect administration costs shall be charged to the Administration Cost category. Any indirect costs that are not administrative shall be itemized separately in the appropriate cost category. If an indirect rate is applied, the basis for the rate and the approving authority must be cited.

g. It is not intended that CAETA national reserve projects automatically be charged 15 percent of the award amount toward the overall administrative costs of the SDA/substate grantee. The amount planned to be used for administration and the specific purposes for which it will be used must be determined in order for an administrative cost budget line item to be established. Once determined and approved, the amount budgeted for administration may be included in any existing administrative cost pool of the SDA/substate grantee which is administering the CAETA national reserve grant. A portion of costs charged to the administrative cost pool may be allocated to the grant, up to the total amount included in the cost pool from the grant and consistent with overall expenditures for the grant and with the existing rules for the charging of costs against an administrative cost pool.

3. Additional Funding

The amount of a grant award cannot be increased after the grant is awarded. If circumstances change so substantially that additional funds are required to serve dislocated workers from the targeted layoff or closing, another grant application must be submitted. The same review and approval procedures will apply to a second grant application as apply to other dislocated worker project proposals. A second application shall include an up-to-date status report of performance under the first award including: Overall enrollments, enrollments by activity and expenditures (obligations and expenditures by cost category).

4. Activities

a. The application budget shall not include costs for activities or services begun with JTPA formula funds used for program purposes prior to the grant award. If initial training costs for a participant are incurred with such funds, the balance of the training cost commitment for that participant must be funded by State or substate formula funds. This policy does not apply to State funded rapid response activities.

b. Applications shall not provide for using CAETA reserve funds for work experience.

c. A minimum of 50 percent of all participants to be served with CAETA national reserve funds shall receive educational and/or occupational retraining, unless otherwise specifically authorized by the Grant Officer.

The 50 percent minimum may include participants whose training is funded by TAA, employer or union-funded tuition or training assistance, as well as Pell grants and other educational financial assistance.

d. CAETA national reserve funds shall not be used for rapid response activities. Rapid response activities are paid for out of State 40 percent funds.

e. CAETA national reserve funds shall not be awarded to fund an individual training project or an individual activity.

5. Identification of Participants To Be Served

The applicant must explain how affected workers most in need of services to return to the labor force will be identified and assured access to necessary services. The applicant must also explain how the planned number of participants to be served was determined.

6. Project Locations

If an applicant plans to operate more than one project or subproject, each location shall be listed and separate

budgets, implementation schedules and, where appropriate, lists of local demand occupations for retraining provided. In all cases, the applicant must also include a summary budget and implementation schedule for the entire project.

7. Placement Rate Expectations

Since funds and resources are specifically focused on the needs of a targeted group of workers and their employment and training needs, the Department expects that:

a. Project placement rate—The planned entered employment rate for any program will be at least 70 percent.

b. Occupational classroom training—A placement rate of 75 percent will be expected from occupational classroom training. This rate may be calculated by including the provisions of job search assistance and other services to participants who receive occupational classroom training.

c. On-the-Job Training (OJT)—A placement rate of at least 80 percent will be expected for OJT. This rate may be calculated by including the provision of job search assistance and other services to participants who receive OJT. If the applicant does not believe such a rate can be achieved in its proposal, it must provide reasons for planning a lower rate.

8. On-the-Job Training (OJT)

No OJT under six weeks duration shall be funded with CAETA reserve grant funds. Any OJT training for between six and 10 weeks in duration shall be consistent with an approved rationale to determine the length of training for a given occupation. The rationale shall be stated in the application. An OJT contract must contain a "hire first" provision.

Part III. The Basic Application Process

A. Funding Considerations

1. Identification of Dislocated Workers

a. Dislocated workers eligible to be provided services with CAETA national reserve funds are defined as individuals who meet the definitions set forth in section 301(a) of the Act and 20 CFR 631.3, 29 U.S.C. 1651(a) and must be dislocated as a consequence of a firm's compliance with the Clean Air Act. The dislocated workers to be served must be specifically identified in the application.

Eligible individuals may be served without regard to the State of residence of the individual (section 311(b)(1)(B), 29 U.S.C. 1661(b)(1)(B)).

b. Applications should indicate that the provision of services to eligible participants will take into account those

"most in need", those least likely to be recalled, those with the least transferable or most obsolete occupational skills, those with the most barriers to other employment opportunities such as poor reading or math skills. Those "most in need", for purposes of CAETA reserve funding, will be determined on a project-by-project basis. Applications shall provide that those participants requiring labor exchange services and other minimal employment services are directed to other appropriate resources such as the State Employment Service.

2. CAETA dislocated worker project applications selected for funding will generally be those which:

a. Effectively identify and target the project to specific groups of dislocated workers, industries or plants, occupations and geographic areas;

b. Specify occupational and educational training related to local demand occupations;

c. Demonstrate a timely response to the target group's employment and training needs for such services; and

d. Are cost effective in terms of services to be provided and results to be achieved.

3. Priority consideration will be given to applications focusing on services to workers who "are unlikely to return to their previous occupation or industry," with particular emphasis on those requiring and wanting retraining for occupations determined to be in demand in the local economy.

B. Screening and Review of Applications

1. Screening Requirements

All applications will be screened to determine completeness and conformity to the Act, regulations, application guidelines and other requirements contained in this announcement.

In order for an application to be in conformance, it must be paginated and include the following:

a. *Transmittal letter.* A transmittal letter from the Governor or the applicant's authorized signatory containing the required assurances.

b. *Standard form.* SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246).

c. *Budget.* A detailed line item budget according to the applicable cost categories found at 20 CFR 631.13 of the JTPA Title III regulations and as outlined in these guidelines.

d. *Project narrative.* The narrative portion of the application including attachments shall not exceed twenty-five (25) double-spaced pages.

typewritten on one side of the paper only. The narrative must address all of the elements specified in the application guidelines.

e. *Certifications.* (1) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a copy of the Statewide or agency annual certification renewable every Fiscal Year per Training and Employment Information Notice (TEIN) No. 15-90. This certification requirement applies only to the Federal grant applicant. The "Certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(2) A "Certification Regarding Debarment, Suspension and other Responsibility Matters, Primary Covered Transactions" must be submitted with all applications as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix B.

(3) A "Certification Regarding Lobbying" shall be submitted with each application as required by 29 CFR part 93, "New Restrictions on Lobbying," 54 FR 6736, 6751 (February 28, 1990). A suggested form incorporating the required text is found in appendix C.

(4) When the applicant is not the State JTPA entity (i.e., subject to the JTPA Governor/Secretary Agreement), SF 424B, Assurances—Non-Construction Programs, with an original signature, must be submitted with the application. This assurance form is found in appendix D.

2. Review and Evaluation

Complete conforming applications will be reviewed and evaluated based on the selection criteria specified in part IV and the availability of funds.

C. Information and Reporting Requirements

1. *Records.* By accepting a grant, the grantee agrees that it shall maintain and make available to the U.S. Department of Labor upon request, information on the operation of the project and on project expenditures. Such information may include the implementation status of the project such as completion of subagreements, hiring of staff, date enrollments began, current and cumulative number of participants, and cumulative expenditures.

2. *Reports.* The grantee shall submit to the Employment and Training Administration, an original and two copies of:

- a. The Worker Adjustment Program Quarterly Report. ETA Form No. 9020 (OMB No. 1205-0274), and
- b. The Worker Adjustment Program Annual Program Report. ETA Form No. 9019 (OMB No. 1205-0274).

D. Grant Funding Procedures

1. *Proposals funded pursuant to the Secretary/Governor agreement shall be subject to the following procedures.*

Where proposals are approved for funding pursuant to the Secretary/Governor Agreement, immediate funding shall be provided. The State and/or local program may be required to submit additional information to satisfy requirements that have been determined to be unacceptable in the original proposal. In such circumstances, the Department may or may not allow the incurring of costs prior to the approval of the modification submitting the additional information depending on the nature and the seriousness of the problems identified. The Grant Officer's approval letter shall contain the Department's decision on this issue.

2. *Proposals not funded pursuant to the Secretary/Governor Agreement shall be subject to the following grant award procedures:*

a. Once a decision is made by the Secretary to approve a proposal, the Secretary shall send a letter to the applicant announcing the award.

b. The applicant shall also be contacted by telephone by the Employment and Training Administration's (ETA) Grant Officer to resolve any problems identified in the proposal and to develop a grant to be executed by the applicant and the Department of Labor. A letter announcing this process shall also be forwarded to the applicant from the ETA Grant Officer.

c. All of the details of the grant shall be resolved by telephone and the grant document shall then be completed in duplicate by the Department's grants office and forwarded to the applicant for signature. The applicant shall sign both copies of the grant document and return the copies to the ETA Grant Officer for final execution.

d. The ETA Grant Officer shall sign both copies of the grant, and forward one signed copy to the applicant. The grant document and the transmittal letter shall instruct the grantee as to the date that the grantee may commence to incur costs against the executed grant.

3. *Emergency awards.* When an emergency award is approved, the Grant Officer shall send an award letter to the applicant.

a. For emergency proposals which are funded pursuant to the Secretary/

Governor Agreement, immediate funding, normally 30 percent of any approved request shall be provided. The applicant shall then be required to submit a fully documented proposal in accordance with the appropriate requirements. Normally the grantee will be allowed to immediately begin incurring costs once the award is made. Such costs may be incurred pursuant to the initial proposal, the award letter, the appropriate assurances, the Act, the regulations, and the Clean Air application procedures.

In certain circumstances it may be necessary to require additional information before the grantee may commence to incur costs. The grantee shall be notified in the award letter where this is the case and of the requirements that must be met before costs may be incurred.

The final funding level, and any additional requirements shall be determined once the Department receives, reviews and approves the fully documented proposal.

b. For emergency proposals which are approved but not funded pursuant to the Secretary/Governor Agreement, the ETA Grant Officer shall both fax and mail an original initial grant once the Grant Officer has approved the award. The grantee, shall sign both the faxed grant and the original grant, in duplicate. The signed fax copies should be faxed immediately to the Grant Officer. The two copies of the signed original grant shall be returned by mail as soon as executed. The Grant Officer will sign the returned fax copies and re fax one to the grantee with a cover letter which will authorize the grantee to commence to incur costs and which will also instruct the grantee regarding the development and submission of a fully documented proposal to be submitted. The Grant Officer shall, upon receipt of the two signed originally copies, sign and return one original with a cover letter. This original initial grant will contain the same date for incurring costs as the faxed grant, and the same instructions for developing and submitting a fully documented proposal. The final level and any additional requirements shall be determined once the Department receives, reviews and approves the fully documented proposal.

E. Grant Amendment Procedures

The Department recognizes that circumstances will arise where grant amendments will be necessary, and that those circumstances will be, in some cases, beyond the control of the project operator. Nevertheless, the Department is concerned about the need to amend

discretionary awards since such amendments can, and in many cases do, represent poor planning and/or management of the projects. Following are guidelines for when an amendment is necessary.

1. All grant amendment requests must be submitted to the Grant Officer by the authorized signatory citing the number of the Notice of Obligation transmitting the grant funds to the State or, in the case of a grantee who is not subject to the JTPA Governor/Secretary Agreement, the grant number.

The States and grantees are responsible for monitoring the implementation and progress of their national reserve projects and identifying circumstances that would require a grant amendment request. *All requests for grant amendments must be accompanied by an explanation of the reasons for proposing such a change to the originally approved project plan.*

a. There are several reasons for grant amendments. Following are types of reasons, and the information or possible changes required related to each reason.

(1) *Grant Amendment Requests required due to changes in circumstances after the grant award, such as, but not limited to, a delay in layoff or plant closure date, the recall of a number of the project participants, certification of worker eligibility for Trade Adjustment Assistance, or recruitment difficulty resulting in enrollments significantly below the planned level.* Such circumstances may require substantial amendment of the project plan and may entail any or all of the following aspects of the plan.

(a) *Extension of the period of performance.* When an extension of the period of performance beyond the approved project period of operation is necessary, such extension requests must be submitted 60 days before the scheduled expiration date of the project as designated in the grant award letter or subsequent correspondence. The reason for the request explaining the change in circumstances that requires the extension must be provided.

(b) *A revised quarterly implementation plan* reflecting the revised period of performance which reflects the activity through the most recent quarter must be provided.

(c) *A revised budget* (if appropriate) must be provided.

(2) *Grant amendment requests required due to budget changes.* The following budget changes will require a grant amendment request. In each case, an explanation of the circumstances requiring the change and a revised overall grant budget must accompany the request. Any other parts of the

approved grant impacted by such changes must also be submitted for approval.

(a) Any proposed increase to the approved budget for Administration;

(b) A proposed increase or decrease of 15 percent or more in the approved project budget for Retraining, so long as the decrease does not result in an overall expenditure for Retraining of less than the 50 percent for this cost category.

(c) In the case of any budget change regardless of the percentage that would result in a decrease in the Retraining cost category line item below the required 50 percent expenditure rate for retraining, or requiring a change in an expenditure rate previously waived by the Secretary, a grant amendment request must be submitted. If the budget change would result in a retraining expenditure rate below the required 50 percent level, a request for waiver including justification must accompany the amendment request.

(d) A proposed increase or decrease of 15 percent or more in the approved project budget for Supportive Services. The resulting increase may not exceed the 25 percent cost limitation for this cost category.

(3) *Grant amendment requests required due to changes in project participant activity levels* such as any increase or decrease of more than 15 percent in the total number of participants to be served or in the number of participants to receive Retraining services including classroom training, occupational skill training, on-the-job training, entrepreneurial training, remedial education, or other proposed training serving more than 10 participants. In such circumstances, the following information must accompany the grant amendment request.

(a) The reason for the request explaining the change in circumstances that requires the extension.

(b) A revised quarterly implementation plan which reflects the activity through the most recent quarter, and the appropriate adjustments to reflect the requested new activity level.

(c) A revised budget (if appropriate).

(4) *Grant amendment requests due to a change in the targeted dislocated workers to be served by the grant.*

In such circumstances, the following information must accompany the grant amendment request.

(a) The reason for the request explaining the change in circumstances that requires the extension.

(b) When appropriate, a revised quarterly implementation plan reflecting the activity through the most recent quarter, and making the appropriate

adjustments to reflect the requested activity level, or a statement to indicate no such activity level changes are anticipated. If a new subproject is added to the grant, each subproject must have a quarterly implementation schedule, and an overall implementation schedule for the project must also be submitted.

(c) A revised budget (if appropriate), or a statement indicating such a change will not affect budget line items. If a new subproject is added to the grant, each subproject must have a separate budget, and an overall project budget must also accompany the request.

(d) The amendment must specifically state if a substantial number of the new workers to be added to the target group are represented by a labor organization. If appropriate, based on the statement provided, evidence of consultation with labor organizations representing such workers must be provided before expenditures will be authorized to serve these workers.

(e) Where a new geographic area is involved, evidence of review by the substate area's Private Industry Council(s) must also accompany the request.

(5) *Grant amendment requests required when it is projected that CAETA national reserve grant funds will remain unexpended.* As soon as it becomes apparent that funds will be unexpended, the State should notify the ETA Regional Office. If this information becomes available within the Program Year in which the grant funds were awarded, the State may submit a request to the Grant Officer to deobligate those funds if projects to be unexpended. Such funds may be reobligated by the DOL to another grantee requiring funding assistance to address a worker dislocation. When the underexpenditure is not identified until after the end of the Program Year in which the grant funds were awarded, the funds are not available for reobligation. Therefore, States may propose an effective alternative use of such funds. If the State desires to reprogram a portion of the unexpended funds originally awarded to a project, it must provide the following information.

(a) Evidence that the original target group has substantially been served, or may be served at a reduced funding level. The circumstances resulting in this assessment by the State must be explained.

(b) Documentation of the services provided to the original target group. This may follow the format of the implementation schedule in identifying activities and numbers of participants served.

(c) Evidence of expenditures for the original target group by cost category.

Note: The original project may continue to operate at a reduced level of activity and expenditure while a new subproject serving another group of targeted workers is funded and becomes operational using the projected unexpended funds.

(d) A request to extend the period of performance of the grant. Please note the time limitations pursuant to section 161(b) on authorization to expend national reserve funds.

(e) A proposal for expenditure of the projected unexpended funds must include the same information required for submittal of a grant application—identification of the target groups; dates of the dislocation; number of workers affected; an explanation of how the projected number of participants was derived; an analysis of the labor market relative to the targeted participants; identification of demand occupations in which retraining will occur; a description of the services to be provided; a cumulative quarterly implementation schedule by major services to be provided, terminations and entered employment, and projected expenditures; a detailed line item budget (including staffing information); evidence of labor consultation where appropriate, and documentation of PIC/LEO review where appropriate.

All requests must be submitted on a timely basis to allow sufficient time for the reasonable expenditure of the funds in question during the remaining statutory time limitation for the funds.

2. Requests for grant amendments will be considered in light of the general purposes of the CAETA national reserve account, the selection criteria for CAETA national reserve projects published by the Employment and Training Administration in the Federal Register, and the purposes of the original grant award. Amendments which request significant changes in the target group to be served will be reviewed on the same basis as a new proposal.

3. The Grant Officer will advise the State or national reserve grantee in writing of any approval or disapproval of the proposed grant amendments, generally within 30 days of receipt of the grant amendment request.

Part IV. Specific Application Requirements

A. Clean Air Employment Transition Assistance Programs Applications

An application for funds shall comply with the following requirements:

1. Application Rules

a. *Definitions.* In addition to the definitions contained and cited in § 631.2 of the JTPA Title III regulations, the following definitions shall apply to programs funded under this part:

(1) *Contractor* means any entity which enters into a contract, grant or agreement with a grantee.

(2) *Grantee* means an entity which receives a discretionary Clean Air Employment Transition Assistance grant directly from the DOL.

(3) *Industrywide project* means services and activities provided by a single grantee to serve workers dislocated from at least three different plants or facilities as a result of compliance with the Clean Air Act in at least two different areas of a single State or two different States.

(4) *Multistate project* means services and activities provided in more than one State by a single grantee to serve workers dislocated from one or more plants or facilities as a result of compliance with the Clean Air Act.

(5) *Subcontractor* means any entity which enters into a contract, grant or agreement with a contractor.

b. *Participant eligibility.* (1) An eligible dislocated worker, as defined by section 301(a) of the Act and § 631.3 of the regulations, shall be eligible for participation in activities under a Clean Air Employment Transition Assistance program only if such dislocated worker has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act as amended.

Note: Such an individual is also eligible for the basic Title III dislocated worker program.

(2) An eligible dislocated worker whose termination or layoff, or notice thereof, is not directly the consequence of compliance with the Clean Air Act, as amended, is not eligible for services under a CAETA national reserve program, but may be eligible under the basic Title III dislocated worker program.

c. *Priority areas of service.* (1) Priority areas of service for CAETA national reserve programs shall be those geographic areas that have, or are projected by the DOL to have, the greatest number of dislocated individuals who meet the eligibility criteria for services as defined in b. above.

(2) In determining priority areas of service, applicants shall submit documentation that supports the assertion that the workers to be served by the application will be or were in fact, dislocated as a consequence of

compliance with the Clean Air Act, as amended.

(a) Allowable activities.

(i) Allowable activities for CAETA national reserve programs shall be those activities authorized by Sections 314 and 326 (e) and (f) of the JTPA.

(ii)(a) Job search shall be an allowable activity only to assist a totally separated dislocated worker who meets the eligibility criteria under IV.1.b above in securing a job within the United States, and where it has been determined that the dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the worker resides. Procedures for determining whether a dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the dislocated worker resides shall be described in the grant application and shall be subject to approval by the Grant Officer.

(b) The cost of job search for a dislocated worker who meets the eligibility criteria under IV.1.b. above shall be an allowable readjustment cost, but shall not provide for more than 90 percent of the cost of necessary and reasonable job search expenses, and may not exceed a total of \$800, unless the need for a greater amount is justified in the grant application and approved by the Grant Officer.

(c) These requirements shall not apply to regular job development activities and services provided to an eligible participant within the commuting area within which the eligible participant resides.

(iii)(a) Relocation shall be an allowable activity only where a dislocated worker who meets the eligibility criteria under IV.1.b. above cannot reasonably be expected to secure suitable employment in the commuting area in which the dislocated worker resides and has obtained suitable employment affording a reasonable expectation of long-term employment in the area in which the worker wishes to relocate, or has obtained a bona fide offer of such employment, provided that the worker is totally separated from employment at the time relocation commences.

(b) The cost of relocation for a dislocated worker who meets the eligibility criteria under IV.1.b. above shall not exceed an amount which is equal to the sum of 90 percent of the reasonable and necessary expenses incurred in transporting the dislocated worker and the dislocated worker's family, if any, and household effects, and a lump sum equivalent to three

times such worker's average weekly wage up to a maximum of \$800 per participant, unless a greater amount is justified to the satisfaction of the Grant Officer in the grant application and is approved by the Grant Officer. Necessary expenses shall be travel expenses for the dislocated worker and the dislocated worker's family and for the transfer of household effects. Reasonable costs for such travel and transfer expenses shall be by the least expensive, most reasonable form of transportation.

(iv)(a) Needs-related payments shall be an allowable cost for the Clean Air Employment Transition Assistance national reserve program, and shall be provided where an eligible participant meets the requirements of this section. An application for funds to assist workers dislocated as a result of a firm's compliance with requirements of the Clean Air Act shall contain assurances that such funds shall be used to provide needs-related payments to eligible participants to enable such participants to participate in and complete training or education programs provided under the grant. In developing a budget, applicants must be aware that the funds available for payment of needs related payments are limited and that, in projecting the use of budget resources, applicants must take into account those persons who will and will not be eligible for needs-related payments. For those determined or expected to be eligible, sufficient funds must be set aside to cover any anticipated needs-related payments.

(b) To qualify for needs-related payments, the dislocated worker who meets the eligibility criteria shall receive, or be the member of a family that receives (at the time of eligibility determination), a total family income that, in relation to family size, does not exceed the lower living standard income level as published annually in the *Federal Register* by DOL. The latest lower living standard income level was published in the *Federal Register* on May 25, 1991.

(c) To receive needs-related payments, the eligible participant shall not qualify for or must have ceased to qualify for unemployment compensation. An eligible individual who has ceased to qualify for unemployment compensation shall have been enrolled in a training or education program by the end of the thirteenth week of the worker's initial unemployment compensation benefit period, or, if later, by the end of the eighth week after being informed that a

short-term layoff will, in fact, exceed 6 months.

(d) For purposes of paragraph (c), the term *enrolled in a training or education program* means that the worker's application for training has been approved and the training institution has furnished written notice that the worker has been accepted in the approved training program beginning within 30 calendar days.

(e) An eligible worker who does not qualify for unemployment compensation must be participating in a training or education program (section 314(e)(1)).

(f) Needs-related payments shall not be provided to any participant where the program operator determines that the participant is not making satisfactory progress in the training program, not to any participant receiving trade readjustment allowances, on-the-job training, out-of-area job search allowances, or relocation allowances under chapter 2 of Title III of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) or 20 CFR part 617.

(g) The level of needs-related payments to an eligible dislocated worker in CAETA national reserve programs shall be equal to the higher of:

(A) The applicable level of unemployment compensation (i.e., the average of the weekly compensation payments made to the dislocated worker during the worker's initial unemployment compensation period); or

(B) The poverty level determined in accordance with criteria published by the Department of Health and Human Services.

(h)(A) The weekly payment level shall be determined at the time of the eligible participant's enrollment into training, and shall be provided to all eligible participants whose family income meets the requirements of paragraph IV.1.(b).

(B) Every three months from the date of the original determination of eligibility for needs-related payments, the family income for any participant participating in a training or education program shall be redetermined. Such a redetermination shall be based on the family income for the three month period using the same criteria that were used in the initial determination process, except that any income from needs-related payments shall not be included. The total revised family income so determined shall be annualized to determine the participant's current eligibility for needs-related payments.

(C) Where the revised family income exceeds the lower living level, the eligible participant shall not be eligible for needs-related payments. Where the revised family income does not exceed

the lower living standard income level, the eligible participant shall continue to receive or become eligible for needs-related payments.

(D) An eligible participant may qualify or requalify for needs-related payments during the period of the training or education program.

(i) For purposes of determining an individual's eligibility for needs-related payments and the amount of such payment, if any, the following definitions shall be used by eligible grantees not funded pursuant to the Secretary/Governor agreement. For grantees funded pursuant to the Secretary/Governor's agreement, these definitions may be used, but where a State definition is used, family income shall not include unemployment compensation, child support payments and welfare payments.

(A) *Family* means spouses and dependent children residing in the same domicile. An adult handicapped individual shall be considered a family of one for eligibility purposes.

(B) *Family income* means all income actually received from all sources by all members of the family for the twelve-month (or six-month, annualized, if twelve-month data are not available) period prior to application. When computing family income, income of a spouse and other family members is counted for the portion of the twelve-month (or six-month, annualized, if twelve-month data are not available) period prior to application that the person was actually a member of the family.

(j) For the purposes of determining an individual's eligibility for participation, family income includes:

(A) Gross wages, including wages from community service employment (CSE), work experience, and on-the-job training (OJT) paid from Job Training Partnership Act funds, and salaries (before deductions);

(B) Net self-employment income (gross receipts minus operating expenses); and

(C) Other cash income received from sources such as interests, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

(k) Family income does not include:

(A) Non-cash income such as food stamps or compensation received in the form of food or housing;

(B) Imputed value of owner-occupied property, i.e., rental value;

(C) Public assistance payments;

(D) Cash payments received pursuant to a State plan approved under title I.

IV, X, or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;

(E) Federal, State, or local unemployment insurance benefits;

(F) Capital gains and losses;

(G) One-time unearned income, such as, but not limited to:

(1) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(2) One-time or fixed-term scholarship or fellowship grants;

(3) Accident, health, and casualty insurance proceeds;

(4) Disability and death payments, including fixed-term (but not lifetime) life insurance annuities and death benefits;

(5) One-time awards and gifts;

(6) Inheritance, including fixed-term annuities;

(7) Fixed-term workers' compensation awards;

(8) Soil bank payments; and

(9) Agricultural crop stabilization payments;

(H) Pay or allowances that were previously received by any veteran while serving on active duty in the Armed Forces;

(I) Educational assistance and compensation payments to veterans and other eligible persons under chapters 11, 13, 31, 34, 35, and 36 of title 38, U.S. Code;

(J) Payments received under the Trade Act of 1974;

(K) Payments received under the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*);

(L) Any income directly or indirectly derived from, or arising out of, any property; and services, compensation or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim; and

(M) Child support payments.

2. Eligible Grantees.

a. Funds available for a CAETA national reserve program shall be awarded to eligible grantees in accordance with the requirements of the Act and regulations, and the procedures, criteria and process contained in these guidelines.

b. Funds shall be distributed to eligible grantees in accordance with procedures specified in these applications.

c. Eligible grantees for CAETA programs shall be States, Title III substate grantees, employers, employer associations, and representatives of employees. However, a specific eligible grantee may not be an appropriate applicant for a particular project. The nature and extent of the proposed project will be factors in considering an application and the applicants ability to perform the work.

d. Employers, employer associations and representatives of employees may submit applications directly to the Grant Officer. Applications submitted by substate grantees must be submitted to the Grant Officer by the State.

3. Submission of Applications

a. Two types of applications may be submitted: regular full applications and emergency applications. Regular full applications shall follow the procedures and requirements as contained in this section and sections 4 and 5. a., b., c., and d below. Emergency applications shall be subject to the procedures and requirements contained in section 5e, below.

b. In the case of a multistate or industrywide project, the applicant shall submit the application directly to the Department of Labor Grant Officer at the address shown in the summary section above. In the case of an intrastate project, the application is to be submitted by or through the Governor to the Grant Officer. Each application shall contain the required certifications and assurances listed in section 4 below.

4. Assurances and Certifications

a. The following assurances shall be included with each application:

—The grantee assures that such funds shall be administered by the grantee in a manner consistent with the Act as amended, the JTPA regulations, the requirements contained in these application guidelines and in accordance with provisions specified in the proposal and amendments approved by the Grant Officer, if any, pursuant to the grant document signed by the Department of Labor Grant Officer.

—The grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the grantor as requested.

—The grantee assures that the information provided in the proposal is correct and the activities proposed

conform to the Act, the Federal regulations for title III activities, and the requirements in these application guidelines.

—Following receipt of the grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the grantee shall provide additional information explaining the projected implementation date.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested, and

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential under-expenditure of funds.

Project proposals not accompanied by the above assurances shall not be accepted for review.

b. Each application shall also contain the following certifications:

(1) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a copy of the Statewide or agency certification required every fiscal year per Training and Employment Information Notice (TEIN) No. 15-90. This certification requirement applies only to the Federal grant applicant. The "Certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(2) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transaction", must be submitted with all CAETA national reserve applications (except those related to national or agency-recognized emergency disasters) as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix b.

(3) A "Certification Regarding Lobbying", as required by 29 CFR part 93, "New Restrictions on Lobbying," 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in appendix C.

(4) When the applicant is not the State JTPA entity, (i.e., subject to the JTPA

Governor/Secretary Agreement), SF 424B, Assurances—Non-Constructions Programs, with an original signature, must be submitted with the application. This assurance form is found in appendix D.

5. Application content.

Each application shall contain the following information in the format outlined below:

A. Period of Award: Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. Period of operation: Applications should generally provide for a period of operation of 12 months but applications proposing a longer period of operation may be submitted with information supporting the need for the additional period.

c. Synopsis of the project. A short summary of pertinent information regarding the project shall be included and shall contain the following:

- (1) The name and address of the project operator, along with the name and telephone number of a contact person for the grantee and project operator;
- (2) The project locations (cities, counties, and States);
- (3) The planned starting and ending dates of the project;
- (4) The total amount of CAETA national reserve funds requested;
- (5) The name(s) of the company(ies) from which the affected workers have been dislocated;
- (6) The date(s) of employment termination and the number of workers affected;
- (7) The names of the States, counties, and cities in which the affected workers reside;
- (8) The total number of participants planned;
- (9) The total number of placements planned;
- (10) The planned cost per participant;
- (11) The planned cost per entered employment; and
- (12) The name, address, and telephone number of the signatory official for the project operator.

d. Project Narrative. The project narrative shall be a detailed explanation containing the following information, and shall not exceed 25 pages:

(1) *Basic Information.* A description of the need for the project and an explanation of how this need was determined. The description shall include:

(a) Information that demonstrates that the employment losses are the consequence of compliance with the Clean Air Act as amended, and that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the workers reside. Specific information must be provided to demonstrate what compliance with the Clean Air Act requirements resulted in the dislocation of the workers to be served by the proposal including as appropriate, identification of specific contracts cancelled; mines closed; plants closed; total jobs lost, jobs lost attributable to compliance with the Clean Air Act, and any other relevant information. A statement shall be included indicating how it was determined that this impact was related to compliance with the Clean Air Act. Information should be provided, as appropriate, for workers who were performing work directly at, or for, the facility impact by, and required to lay off workers, as a result of compliance with the requirements of the Clean Air Act. For example: To comply with the requirements of the Clean Air Act a utility company switches from high sulphur coal to low sulphur coal and contracts with different company to provide the low sulphur coal. The high sulphur coal mine closes. The proposal to serve the workers dislocated at the closed high sulphur coal mine must provide documentation to demonstrate that the mine was providing high sulphur coal to the particular utility, that the utility did switch to another provider for low sulphur coal and that the consequence was the closing of the high sulphur coal mine. The information shall also include documentation regarding any other causes, other than compliance with the requirements of the Clean Air Act, that contributed to the dislocations.

Proposals that do not provide adequate documentation and/or are unable to provide adequate documentation to support a decision to fund under these guidelines, shall automatically be considered for funding under the basic Title III national reserve discretionary application procedures.

(b) The schedule for layoffs and closing.

(c)(i) The number of affected workers likely to participate in the program, taking into consideration the total number of workers affected by specific occupations, the wage levels for each occupation, the number of workers eligible to participate, the number likely to be transferred, and the number likely to be recalled. Applicants shall certify that recall within the next 12 months is highly unlikely for those dislocated workers to be served.

(ii) The number of affected workers who possess locally transferable skills, and who can be expected to find other employment with minimal or no assistance.

(iii) Where the layoff has occurred more than 4 months prior to the submittal of the application, information indicating how the applicant determined the number of affected workers who remain unemployed and in need of services, and

(d)(i) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(ii) Information on the economic conditions for the State(s) and the geographic area(s) to be served as documented by the most recent unemployment rate for each State and area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project, and

(iii) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and the State to which the plant will be relocated shall be provided.

(2) *Existing Resources.* The project narrative shall explain why these dislocated workers cannot be served with existing resources, in particular State or substate grantee JTPA Title III formula funds.

(3) *Trade adjustment assistance (TAA) for workers under the Trade Act.* The application shall indicate whether an application has been made for TAA assistance, and if so, whether certification has been granted or denied for Trade Adjustment Assistance for workers. If certification has been issued, provide petition number, if available.

When a target group is certified as eligible to receive TAA including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. The coordination procedures established to track the project participants receiving TAA-funded training shall also be explained.

(4) *Employer/union assistance.* The project narrative shall explain in detail the nature and duration of any contractual obligation of, or any voluntary arrangement by, the employer(s) or union(s) to provide training-related services to terminated

employees. When applicable, severance pay arrangements shall be addressed.

(5) *Labor market information.* The project narrative shall contain a detailed discussion on available labor market data as it relates to the specific area in which dislocation services will be provided. Specific listings of demand occupations in the areas where the dislocated workers will be trained shall be included, as well as an explanation of how such occupations were identified. The narrative also shall contain a certification that the number of unemployed workers available for employment in the identified demand occupations for which retraining is planned is insufficient to meet the need.

(6) *Coordination and linkage.*

(a) Governors and substate grantees.

(i) The application shall include evidence that the Governor of each State and the appropriate Title III grantee of each substate area in which a project site is proposed have been informed of such application and given an opportunity to comment on how the proposed project would affect workers in the State or substate area.

(ii) Letters from the appropriate Governors and substate grantees shall be included to document that the opportunity was provided for review and comment of the application. Each Governor's letter shall indicate why the State has not funded the proposed project/subproject for that State as well as a description of the funding and assistance, if any, it will provide to the project/subproject. The substate area grantee letter shall indicate why the substate grantee is unable to provide sufficient services to the proposed project/subproject in the substate area, as well as a description of the funding and assistance, if any, it will provide to the project/subproject.

(b) *Private industry council (PIC)/local elected official (LEO).* All grant applications shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(c) *Labor organizations.* All applications for dislocated workers projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) shall provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers. The application must describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(d) *Others.*

(i) Each application shall show that the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including, but not limited to:

(a) The Unemployment Compensation System;

(b) The State Employment Service;

(c) The Pell Grant program;

(d) Other Federal programs;

(e) The Trade Adjustment Assistance (TAA) program, if applicable; and

(f) Other appropriate State and local program resources.

(g) In those instances where State and other funds, such as vocational education, economic development, TAA, or special appropriations, are available to the project, the application shall include a brief discussion of the activities for which those funds will be used and their relationship to the CAETA national reserve funds requested, taking into consideration section 141(b) of JTPA.

(7) *Description of services.* All applications shall include the description of services to be provided:

(a) *Intake and eligibility determination.* Applications shall describe the procedures to be used to recruit and ensure the eligibility of each participant and shall indicate what entity shall be accountable for eligibility determination.

(b) *Basic readjustment services.* Each application shall describe how assessment, job search assistance, counseling, job development and placement services and any other activities will be coordinated with retraining activities (assessment procedures shall include the capability to determine if a participant's reading skills are below the 8th grade level). See JTPA section 314(c), 29 U.S.C. 1661c(c).

(c) *Retraining services.* Applications shall describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas. For classroom skill training, list the likely providers, course titles (indicate whether customized or off-the-shelf), cost of each course and the specific demand occupation in which a participant who completes training will be placed. For on-the-job training, list job title or occupation, likely provider, length of training and entry level wage. (CAETA national reserve funds shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, and other such changes.) (See JTPA section 314(d), 29 U.S.C. 1661c(d)).

(d) *Participant supportive services.*

All applications shall discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments. See JTPA section 314(e), 29 U.S.C. 1661c(e).

(8) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and a discussion of initial actions taken to support implementation.

Enrollment of participants normally should occur no later than 90 days following the Grant Officer's authorization to incur costs against the funds awarded. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Project quarterly implementation data showing the following projected cumulative data for the overall project and for such subproject site:

(i) Enrollments for each major activity: assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(9) *Planned outcomes.* The applications shall include project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(10) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, the application shall include a two-page or less description of the fiscal and management capabilities of the prospective project operator, including how the prospective project operator (or the division which will have responsibility for this project) is or will be organized. The description shall include information demonstrating:

(a) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs; and

(b) The capability of the project operator to maintain and report as necessary required fiscal and management information. The Department may use records of past performance to evaluate management capability.

(11) *Detailed line item budget.* (a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services, including needs-related payments, as classified in 20 CFR 631.13. Cost limitations under section 315 of JTPA and 20 CFR 631.13 apply to applicants who receive funds pursuant to the Secretary/Governor agreement.

(i) The budget shall provide information by both cost categories as discussed below and by line-item. The suggested format in plate I is recommended for utilization and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. Staffing costs shall be specifically identified. Training costs for off-the-shelf training packages purchased at catalogue prices or which meet the requirements for acceptable fixed-unit price, performance based contracts as published in the *Federal Register* at 54 FR 10459 (March 13, 1989) shall be identified. Administrative costs, prorated as required by 20 CFR 629.38(e)(2), shall be identified.

(iii) For a pass-through project, where the State is not the project operator, the State may reserve 1½ percent (.015) of the total grant award or \$15,000,

whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. This cost is to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside permitted to be reserved by this paragraph must provide a justification including the projected person-hours and functions to be performed.

(iv) Each equipment purchase or lease with a unit cost of \$500 or more must be specifically listed and justified.

	Administration	Basic readjustment	Retraining	Supportive services	Total
(1) Staff Salaries.....	X	X	X		X
Fringe Benefits.....	X	X	X		X
Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charge to grant).					
(2) Staff Travel.....	X	X	X		X
(3) Communications.....	X	X	X		X
(4) Facilities.....	X	X	X		X
• Rent.....	X	X	X		X
• Maintenance.....	X	X	X		X
• Utilities.....	X	X	X		X
(5) Consumable Office Supplies.....	X	X			X
(6) Consumable Instructional Materials.....	X	X	X		X
(7) Equipment.....	X	X	X		X
• Lease.....	X	X	X		X
• Purchase.....	X	X	X		X
(Attach supplement/narrative, listing and explaining each item leased and/or purchased \$500 or over).					
(8) Relocation (Section 314).....		X	X		X
(9) Subcontracts.....			X		X
• Tuition.....			X		X
• OJT wages.....			X		X
• Fixed Unit Price 20 CFR 629.38(e)(2).....					X
• Audit.....	X				X
• Other (Identify).....	X	X	X		X
(10) Supportive Services.....				X	X
• Needs Related payments.....				X	
• Child Care.....				X	
• Transportation.....				X	
• Other.....				X	
(11) Other (Identify).....	X	X	X		X
(12) Totals.....	X	X	X		X

Instructions: All spaces marked with an "X" must be completed, if none, show an "O". Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Where CAETA national reserve funds will be combined with funds from other sources, e.g., other JTPA funds, employer or union training funds, State formula-allotted funds, State vocational education or economic development funds, the budget shall indicate for each line item the total costs and the amount to be funded from the CAETA national reserve account and the other funding source(s).

(c) No direct costs shall be charged for any activity that is included in the indirect cost line item.

e. *Emergency application.* (1)(a) Applications for emergency funding consideration shall be submitted only to address situations where:

(i) The dislocations occur under circumstances which do not provide a reasonable period of time to develop a full proposal, that is, a sudden and unexpected event;

(ii) The number of dislocated workers who meet the eligibility criteria is such that both the JTPA Title III substate grantee and the State are unable to respond to the dislocation event with existing resources; and

(iii) The workers did not receive a 60-day notice under the Worker Adjustment and Retraining Notification Act in advance of the layoff.

(2)(a) Emergency proposals shall be considered under a two-step process. The first step shall be an initial proposal request which shall contain limited key information. The second step, which will be necessary only where there is a decision made by the Grant Officer to approve the initial request, shall be the fully documented proposal. An applicant may also, if it so wishes, submit a fully documented proposal where the Grant

Officer determines not to approve an initial emergency proposal.

(b) The applicant's initial proposal request shall not exceed two pages (plus the transmittal letter and the assurances and certifications). This initial request may be submitted by FAX. An original signed request must also be submitted, and must be on file in the Department before any funds shall be released. The initial request shall contain:

(i) An explanation of the circumstances justifying the proposal to be submitted as an emergency request;

(ii) The areas to be served by the grant;

(iii) A brief assessment of the need, including the procedures used to determine that there are limited prospects for reemployment in a similar industry or occupation within the commuting area in which the affected workers reside;

(iv) An estimate of the number of individuals impacted by the emergency who meet the eligibility criteria under these guidelines;

(v) An estimate of the number of individuals to be served by the grant;

(vi) The amount of funds being requested;

(vii) A brief summary of the activities to be conducted;

(viii) A statement that demonstrates the employment losses are the consequence of compliance with the Clean Air Act of 1990, as amended, and that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the worker resides. Specific information demonstrating that the dislocations were a consequence of compliance with the Clean Air Act of 1990, as amended, shall be provided (see section 5.(d)(1)(a) above); and

(ix) The assurances and certifications specified in section 4.

(3) A full proposal shall be submitted where the Secretary approves an initial proposal request. The full proposal shall be submitted in accordance with the requirements contained in the award letter responding to the initial proposal request and the procedures and requirements contained in section 5.(a), (b), (c) and (d) above. The full proposal shall be reviewed following established procedures for the selection, review and approval of discretionary grant applications contained in sections 6, 7 and 8.

(4)(a) If a decision is made to fund a proposal, an amount, not to exceed one-third of the request, shall immediately be made available to commence operations allowable under the Act, regulations, the requirements and instructions contained in this document,

and the Grant Officer approval letter, and;

(b) Once the fully documented proposal has been reviewed, the Department shall determine how much, if any, additional funds to provide. The final amount provided, when combined with the initial amount awarded, shall not exceed the total initial request.

6. Selection Criteria

The following selection criteria shall be used to determine the acceptability of the fully documented proposal and the final award amount for any already approved emergency award.

a. *Overall criteria.* Grant applicants for funds under this subpart shall be evaluated and selected for funding where the Grant Officer concurs that the dislocated workers to be served by the program described in the application, as documented by the information required in section 5.d(1)(a), will be or were dislocated as a consequence of compliance with the Clean Air Act of 1990, as amended, based on the extent to which the applicant demonstrates that the proposal:

(1) Meets the requirements contained in these guidelines;

(2) Meets the purposes of the Act and the regulations;

(3) Will encourage an effective response to the dislocations;

(4) Promotes an effective use of funds; and

(5) Provides all information required for a proposal.

b. *Specific criteria.* The following specific criteria shall apply to the evaluation of applications and selection of grantees for CAETA national reserve dislocated worker projects:

(1) *Priority area.* The Grant Officer shall determine whether the application will serve eligible dislocated workers in areas which have the greatest number of eligible workers.

(2) *Severity of need.* The Grant Officer shall consider the severity of the circumstances and need, as described in the grant application (e.g., the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, and the local and State unemployment rates compared to the national rates).

(3) *Target group.* The Grant Officer shall consider the concentration of the eligible individuals in a specific occupation(s), plant(s), or geographic area(s). The Grant Officer shall consider the extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force, as shown by an analysis of the characteristics of the affected workers.

The requirements of this paragraph shall be a major factor in determining the responsiveness of a proposal.

(4) *Coordination and linkages; utilization of resources.* The Grant Officer shall consider the extent to which the applicant has demonstrated that the project will be integrated with other existing program and community resources, including State/substate JTPA Title III formula-funded activities and other JTPA programs, welfare programs, and the Trade Adjustment Assistance program, where appropriate.

(5) *Services.* The Grant Officer shall consider the services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population; and the extent to which specific occupations are identified for retraining and placement. The applicant shall demonstrate that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting or both. This demonstration shall be a major factor in determining whether to fund the application.

(6) *Management capability.* The Grant Officer shall consider the project operator's fiscal and program management capabilities to administer the proposed project and the project operator's demonstrated ability to begin program operations expeditiously in making a funding decision.

(7) *Cost effectiveness.* The Grant Officer shall consider the cost effectiveness of the project, e.g., cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected, including expected wage levels; the level of funding designated for client services as opposed to staff support and administration; the proportion of staff costs to those costs directly attributable to client services such as tuition, and tools, and whether sufficient provision has been made for needs related payments. The Grant Officer shall also consider whether costs are necessary and reasonable. The costs effectiveness of the project shall be a major factor in determining whether to fund the application.

(8) *Other considerations.* The Grant Officer shall consider the overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(9) The Grant Officer shall consider written comments regarding the application submitted by the Governor or other interested parties.

7. Application Review

a. An application shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

b. An application shall be rejected when:

(1) The application proposes to assist workers who were not dislocated as a consequence of compliance with the Clean Air Act, as amended. Projects not considered for funding for this reason shall be automatically considered for funding with regular Title III discretionary funds;

(2) The application does not meet the standards established by these guidelines;

(3) Other available applications appear to be more effective in achieving the goals of this category;

(4) The information required is not provided in sufficient detail to permit adequate assessment of the proposal;

(5) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided or is unsatisfactory; or

(6) The application is not consistent with statutory and/or regulatory requirements.

8. Approval

a. In the case of an award to a State or to an existing State JTPA substate area grantee, the Grant Officer shall issue an award letter and Notice of Obligation (NOO) pursuant to the Secretary/Governor Agreement. For others, an appropriate grant document shall be executed by the Grant Officer and the grant applicant's official signatory.

b. The Act, JTPA regulations, these requirements, the grant award letter/agreement, assurances, grant application and any approved amendments thereto, and the approval by the Grant Officer in writing shall govern the operation of the project.

c. The effective date for the use of the funds shall be the date of the grant award letter or grant agreement authorizing costs to be incurred against the funds awarded. No costs may be incurred against awarded funds prior to such date. The authority to incur costs immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker. Where authority to immediately incur costs is not provided, specific instructions will be included in the Grant Officer's award letter regarding

the actions needed in order to obtain authority to incur costs.

d. Instructions regarding grant amendments required due to changes in circumstances after the grant award will be transmitted in a separate document.

Signed at Washington, DC, this 29th day of January, 1992.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix A

Certification Regarding Drug-Free Workplace Requirements

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code):

Check ☐ if there are workplaces on file that are not identified here.

Name of Applicant Organization

Name and Title of Authorized Signatory

Signature and Date

Appendix B

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR part 98, § 98.510, Participants' responsibilities.

(Before Signing Certification, Read Attached Instructions Which Are an Integral Part of the Certification)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses

enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Applicant Organization

Name and Title of Authorized Signatory

Signature and Date

Appendix C

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Applicant Organization

Name and Title of Authorized Signatory

Signature and Date

*Note: In these instances, "All" in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over \$100,000 (per OMB).

Appendix D

SF 424-B

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) which prohibits discrimination on the basis of race, color, national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255), as amended, relating to nondiscrimination on the basis of

drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) title VIII of the Civil Rights Act of 1968 (42 U.S.C. 36-01 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the national Environmental Policy Act of 1969 (Pub. L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of under ground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93-

523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic

properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with Pub. L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory animal Welfare Act of 1966 (Pub. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching,

or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

[FR Doc. 92-2951 Filed 2-6-92; 8:45 am]

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Registered Federal

Friday
February 7, 1992

Part V

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled
Hazardous Waste Sites, Proposed Rule
No. 12

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4102-51]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 12

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") is proposing to add new sites to the NPL. This 12th major proposed rule includes 30 sites, of which 6 are Federal facility sites. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule brings the number of proposed NPL sites to 52, of which 9 are Federal facility sites; 1,183 sites are on the NPL at this time, of which 116 are Federal facility sites. Proposed and final NPL sites total 1,235.

DATES: Comments on the Austin Avenue Radiation site, being proposed in this rule based on the health advisory criteria, must be submitted on or before March 9, 1992. Comments on all other sites must be submitted on or before April 7, 1992.

ADDRESSES: Mail original and three copies of comments (no facsimiles) to Larry Reed, Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For Docket addresses and further details on their contents, see section I of the "SUPPLEMENTARY INFORMATION" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and

Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Superfund Hotline, Phone (800) 424-9346 or (703) 920-9810 in the Washington, DC metropolitan area).

SUPPLEMENTARY INFORMATION:

- I. Introduction.
- II. Purpose and Implementation of the NPL.
- III. Contents of This Proposed Rule.
- IV. Regulatory Impact Analysis.
- V. Regulatory Flexibility Act Analysis.

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways:

Ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above 28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepares a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL"). The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites."¹ CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR

¹ CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." For ease of reference, EPA uses the term "site" to refer to all "releases" and "facilities" on the NPL.

40658). The NPL has been expanded since then, most recently on September 25, 1991 (56 FR 48438).

The NPL includes two sections, one of sites evaluated and cleaned up by EPA (the "General Superfund section"), and one of sites being addressed by other Federal agencies (the "Federal facilities section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score; EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal facilities section includes those facilities at which EPA is not the lead agency. The general superfund section includes 1,067 sites and the Federal facilities section includes 116 sites, for a total of 1,183 sites on the NPL.

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 40 sites from the general superfund section of the NPL, most recently 2 sites on January 6, 1992 (57 FR 355):

John's Sludge Pond, Wichita, Kansas
Beachwood/Berkley Wells, Berkley Township, New Jersey
All 40 deleted sites are listed below.

FINAL SITES DELETED FROM NPL BECAUSE NO FURTHER RESPONSE NEEDED

[January 1992]

St	Site name	Location
AR	Cecil Lindsey	Newport
AS	Taputimu Farm *	Island of Tutila
AZ	Mountain View Mobile Home Estates (once listed as Globe) *	Globe
CA	Jibboom Junkyard	Sacramento
CM	PCB Warehouse *	Saipan
DE	New Castle Steel	New Castle County
FL	Parramore Surplus	Mount Pleasant
FL	Tri-City Oil Conservationist, Inc.	Tampa
FL	Varsol Spill (once listed as part of Biscayne Aquifer)	Miami
GA	Luminous Processes, Inc.	Athens
IL	Petersen Sand & Gravel	Libertyville
IN	International Minerals & Chemical Corp. (Terre Haute East Plant)	Terre Haute
IN	Poor Farm	Hancock County
IN	Wedzeb Enterprises	Lebanon
KS	John's Sludge Pond	Wichita
MD	Chemical Metals Industries, Inc.	Baltimore
MD	Middletown Road Dump	Annapolis
MI	Gratiot County Golf Course	St. Louis

FINAL SITES DELETED FROM NPL BECAUSE NO FURTHER RESPONSE NEEDED—Continued

[January 1992]

St	Site name	Location
MI	Whitehall Municipal Wells	Whitehall
MN	Morris Arsenic Dump	Morris
MN	Union Scrap Iron & Metal Co.	Minneapolis
MS	Walcotte Chemical Co. Warehouses	Greenville
NC	PCB Spills *	243 Miles of Roads
NJ	Beachwood/Berkley Wells	Ocean County
NJ	Cooper Road	Voorhees Township
NJ	Friedman Property (once listed as Upper Freehold Site)	Upper Freehold
NJ	Krysowaty Farm	Hillsborough
NJ	M&T Delisa Landfill	Asbury Park
OH	Chemical & Minerals Reclamation	Cleveland
PA	Enterprise Avenue	Philadelphia
PA	Lansdowne Radiation	Lansdowne
PA	Lehigh Electric & Engineering Co.	Old Forge Borough
PA	Presque Isle	Erie
PA	Reeser's Landfill	Upper Macungie
PA	Voortman Farm	Upper Saucon
PA	Wade (ABM) (once listed as ABM-Wade)	Chester
TT	PCB Wastes *	Pacific Trust Terr.
TX	Harris (Farley Street)	Houston
VA	Matthews Electroplating *	Roanoke County
WA	Toftdahl Drums	Brush Prairie

Number of Sites Deleted: 40.

* State top-priority.

In addition, 25 sites in the general superfund section are in the "Construction Completion" category, including 13 sites added to the category on January 16, 1992 (57 FR 1872). When EPA activated the category on February 11, 1991 (56 FR 5634), it stated that the category would consist of sites awaiting deletion, sites awaiting the first 5-year review after the remedial action was completed, and sites undergoing long-term remedial action. EPA has decided to eliminate the 5-year review subcategory. On the basis of subsequent experience and analysis, EPA has determined that tying these two independent processes (5-year review and deletion) is unnecessary and potentially confusing. (December 24, 1991 (56 FR 66601)).

Thus, a total of 65 sites, all in the general superfund section, have been deleted or placed in the construction completion category.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 30 sites to the NPL. Final and proposed sites now total 1,235.

Public Comment Period

The documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters and in the Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional Dockets for hours.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/260-3046.
Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203-2211, 617/573-5729.
Ben Conetta, Region 2, 26 Federal Plaza, 7th Floor, room 740, New York, NY 10278, 212/264-6696.

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-7904.
Beverly Fulwood, Region 4, U.S. EPA Library, room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604, 312/886-6214.

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/665-6740.

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551-7241.

Greg Oberley, Region 8, U.S. EPA, 999 18th Street, suite 500, Denver, CO 80202-2466, 303/294-7598.

Lisa Nelson, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744-2347.

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW-113, Seattle, WA 98101, 206/442-2103.

The Headquarters docket for this rule contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. Each Regional docket for this rule contains all of the above information for those sites that are in that Region, and, in addition, the

technical reference documents relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. Documents may be viewed, by appointment only, in the Headquarters or appropriate Regional Docket. Requests for copies may be directed to the Headquarters or appropriate Regional Docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). After considering the relevant comments received during the comment period, EPA will add sites to the NPL if they meet requirements set out in the NCP and any applicable listing policies.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 56 FR 35840, July 29, 1991). Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

Note that the comment period for the Austin Avenue Radiation site, which is being proposed based on the health advisory criteria and not the HRS score, is 30 days. This is based on the acute threat posed and the fact that documentation using the health advisory criteria is not nearly as complex to review as that using the HRS (all health advisory sites have 30-day comment periods). All other sites in this rule have a 60-day comment period.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the final NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). As of the end of December 1991, EPA had conducted 2,133 removal actions, 523 of them at NPL sites. Information on removals is available from the Superfund Hotline.

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

The ranking of sites by HRS scores does not determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway. Thus, EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) that typically follows listing.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990)). It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with subpart E of the NCP (55 FR 8839, March 8, 1990). After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after

further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.425(b)(1). Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge regarding the extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability or define the geographic extent of a release, a listing need not be amended if further research into the extent of the contamination reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

III. Contents of This Proposed Rule

Table 1 identifies the 24 NPL sites in the general superfund section and table 2 identifies the 6 NPL sites in the Federal facilities section being proposed in this rule. Both tables follow this preamble. All but one site are proposed based on HRS scores of 28.50 or above. One site, Austin Avenue Radiation Site, is being proposed based on the ATSDR health advisory criteria. Each proposed site is placed by score in a group corresponding to groups of 50 sites

presented within the NPL. For example, a site in group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Since promulgation of the original NPL (48 FR 40660, September 8, 1983), EPA has arranged the NPL by rank based on HRS scores and presented sites on the NPL in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk.

EPA has proposed an alternative, and what it believes to be more useful, format for presenting NPL sites in both proposed and final rules (56 FR 35843, July 29, 1991). Under this approach, proposed and final rules would present sites in alphabetical order by State and by site name within the State, as well as identify sites in each rule by rank. Once a year the entire NPL, appendix B, would be published alphabetically by State. EPA has requested comment on that approach. Until all comments are received and considered, no final decision on the format will be made. The following table presents the 24 general superfund section sites and 6 Federal facility section sites in this rule in the proposed format.

NATIONAL PRIORITIES LIST, GENERAL SUPERFUND SECTION PROPOSED RULE #12

[By state]

State	Site name	City/county
AR	Popple, Inc.	El Dorado.
AR	West Memphis Landfill	West Memphis.
CA	Cooper Drum Co.	South Gate.
CA	GBF, Inc. Dump	Antioch.
CA	McCormick & Baxter Creosoting Co.	Stockton.
CO	Smeltertown Site	Salida.
FL	Helena Chemical Co. (Tampa Plant).	Tampa.
FL	Stauffer Chemical Co. (Tampa Plant).	Tampa.
FL	Stauffer Chemical Co. (Tarpon Springs Plant).	Tarpon Springs.
IN	U.S. Smelter and Lead Refinery, Inc.	East Chicago.
KS	57th and North Broadway Streets Site.	Wichita Heights.
LA	American Creosote Works, Inc. (Winnfield Plant).	Winnfield.
MA	Blackburn & Union Privileges.	Walpole.
MO	Big River Mine Tailings/ St. Joe Minerals Corp.	Desloge.
NC	General Electric Co./ Shepherd Farm.	East Flat Rock.
OR	Northwest Pipe & Casing Co.	Clackamas.
PA	Austin Avenue Radiation Site.	Lansdowne.
PA	Crater Resources, Inc./ Keystone Coke Co./ Alan Wood Steel Co.	Upper Merion Township.

NATIONAL PRIORITIES LIST, GENERAL SUPERFUND SECTION PROPOSED RULE #12—Continued

[By state]

State	Site name	City/county
PA	Foot Mineral Co.	East Whiteland Township.
PA	Metropolitan Mirror and Glass Co., Inc.	Frackville.
SC	Koppers Co., Inc. (Charleston Plant).	Charleston.
UT	Richardson Flats Tailings	Summit County.
VI	Tutu Wellfield	Tutu.
WI	Refuse Hideaway Landfill	Middleton.

Number of Sites Proposed for Listing: 24.

NATIONAL PRIORITIES LIST, FEDERAL FACILITIES SECTION PROPOSED RULE #12

[By state]

State	Site name	City/county
CA	Concord Naval Weapons Station.	Concord.
CA	Jet Propulsion Laboratory (NASA).	Pasadena.
GU	Andersen Air Force Base	Yigo.
TN	Memphis Defense Depot	Memphis.
VA	Naval Surface Warfare Center—Dahlgren.	Dahlgren.
VA	Naval Weapons Station—Yorktown.	Yorktown.

Number of Sites Proposed for Listing: 6.

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover sites subject to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings (56 FR 5598, February 11, 1991).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that sites in the general superfund section subject to RCRA Subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will list certain categories of RCRA sites subject to subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so best furthers the aims of the NPL/RCRA policy and the CERCLA program. EPA has explained these policies in detail in past *Federal Register* discussions (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add three sites to the general superfund section of the NPL that are subject to RCRA subtitle C corrective action authorities. These are McCormick and Baxter Creosoting Co. in Stockton, California, U.S. Smelter and Lead Refinery, Inc. in East Chicago, Indiana, and General Electric Co./Shepherd Farm in East Flat Rock, North Carolina. Material has been placed in the public docket for the U.S. Smelter and Lead Refinery, Inc. site and the McCormick and Baxter Creosoting Co. site confirming that the owners are in bankruptcy and unable to pay for cleanup, and for the General Electric Co./Shepherd Farm site confirming its converter status.

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

In this rule, the Agency is proposing to add six sites to the Federal facilities section of the NPL.

Austin Avenue Radiation Site

The Austin Avenue Radiation site, Lansdowne, Pennsylvania, consists of a duplex apartment, a warehouse attached to the apartment, other residences where radioactive wastes have been deposited, and an adjacent railroad right-of-way. The warehouse is the former location of the W.L. Cummings Radium Processing Company, which operated a radium refining process from 1915 to 1925. The apartment and nearby areas are believed to have been contaminated

with radium tailings and subsequent radioactive decay from the operation.

The ATSDR Public Health Advisory issued on September 6, 1991 recommends the immediate dissociation of residents from the site. Although there are no longer any residents in either the apartment or warehouse, the site has no security and ATSDR is concerned about the potential for fires, intrusion, or unauthorized events at the site. In case of a fire, the contaminants would be indiscriminantly distributed throughout the neighborhood, which would result in widespread contamination. In addition, nearby homes are contaminated with these wastes.

The health advisory and other supporting documentation have been placed in the public docket.

IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites to the NPL. EPA believes that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes that the anticipated economic effects related to proposing to add these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

This proposed rulemaking is not a "major" regulation because it does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of responses at sites in the EPA section of the NPL result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites in this rule. The proposed listing of a site on the NPL may be followed by a search for

potentially responsible parties and a Remedial Investigation/Feasibility Study (RI/FS) to determine if remedial actions will be undertaken at a site. The selection of a remedial alternative, and design and construction of that alternative, follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may enter into consent orders or agreements to conduct or pay the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs up front and subsequently bring an action for cost recovery.

The State's share of site cleanup costs for Fund-financed actions is governed by CERCLA section 104. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs of the remedial action, leaving 10% to the State. For publicly-operated sites, the State's share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in start-up costs according to the ownership criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years. 40 CFR 300.435(f)(3).

- For other cleanups, EPA will share the cost of a remedy until it is operational and functional, which generally occurs after one year. 40 CFR 300.435(f)(2), 300.510(c)(2). After that, the State assumes all O&M costs. 40 CFR 300.510(c)(1).

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site ¹
RI/FS.....	\$1,300,000
Remedial Design.....	1,500,000
Remedial Action.....	² 25,000,000
Net present value of O&M ³	² 3,770,000

¹ 1988 U.S. Dollars² Includes State cost-share³ Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's participation ends. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the non-Federal sites proposed for the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all non-Federal sites in today's proposed rule, but excluding O&M costs, would be approximately \$97 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share start-up costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately \$90 million. As with the EPA share of costs, portions of the State share will be borne by responsible parties.

Placing a hazardous waste site on the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, these effects cannot be precisely estimated. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or

industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's proposal to place additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate before the RI/FS is completed at these sites.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's proposed inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the

form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses nor estimate the number of small businesses that might also be affected.

The Agency does expect that CERCLA actions could significantly affect certain industries, and firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

TABLE 1.—NATIONAL PRIORITIES LIST, GENERAL SUPERFUND SECTION PROPOSED RULE #12

(By group)

NPL Gr ¹	State	Site name	City/county
1	CA	McCormick & Baxter Creosoting Co.	Stockton.
1	CO	Smeltertown Site	Salida.
1	FL	Stauffer Chemical Co. (Tampa Plant).	Tampa.
1	FL	Stauffer Chemical Co. (Tarpon Springs Plant).	Tarpon Springs.
1	IN	U.S. Smelter and Lead Refinery, Inc.	East Chicago
1	MO	Big River Mine Tailings/St. Joe Minerals Corp.	Desloge.
1	NC	General Electric Co./Shepherd Farm.	East Flat Rock.
4	AR	West Memphis Landfill.	West Memphis.
4	CA	GBF, Inc. Dump	Antioch.
4	OR	Northwest Pipe & Casing Co.	Clackamas.
4	UT	Richardson Flats Tailings.	Summit County.
5	AR	Popple, Inc.	El Dorado.
5	CA	Cooper Drum Co.	South Gate.
5	KS	57th and North Broadway Streets Site.	Wichita Heights.

TABLE 1.—NATIONAL PRIORITIES LIST, GENERAL SUPERFUND SECTION PROPOSED RULE #12—Continued

[By group]

NPL Gr ¹	State	Site name	City/county
5	LA	American Creosote Works, Inc. (Winnfield Plant).	Winnfield.
5	MA	Blackburn and Union Privileges.	Walpole.
5	PA	Crater Resources, Inc./Keystone Coke Co./Alan Wood Steel Co.	Upper Merion Twp.
5	PA	Foot Mineral Co.	East Whiteland Twp. Charleston.
5	SC	Koppers Co., Inc. (Charleston Plant).	Charleston.
5	VI	Tutu Wellfield	Tutu.
15	PA	Metropolitan Mirror and Glass Co., Inc.	Frackville.
15	WI	Refuse Hideaway Landfill.	Middleton.
20	FL	Helena Chemical Co. (Tampa Plant).	Tampa.

TABLE 1.—NATIONAL PRIORITIES LIST, GENERAL SUPERFUND SECTION PROPOSED RULE #12—Continued

[By group]

NPL Gr ¹	State	Site name	City/county
22	PA	Austin Avenue Radiation Site.	Lansdowne.

Number of Sites Proposed for Listing 24.
¹ Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

TABLE 2.—NATIONAL PRIORITIES LIST, FEDERAL FACILITIES SECTION PROPOSED RULE #12

[By group]

NPL Gr ¹	State	Site name	City/county
2	TN	Memphis Defense Depot.	Memphis.
5	CA	Concord Naval Weapons Station.	Concord.
5	CA	Jet Propulsion Laboratory (NASA).	Pasadena.

TABLE 2.—NATIONAL PRIORITIES LIST, FEDERAL FACILITIES SECTION PROPOSED RULE #12—Continued

[By group]

NPL Gr ¹	State	Site name	City/county
5	GU	Anderson Air Force Base.	Yigo.
5	VA	Naval Surface Warfare Center—Dahlgren.	Dahlgren.
5	VA	Naval Weapons Station—Yorktown.	Yorktown.

Number of Sites Proposed for Listing: 6.
¹ Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243, E.O. 12580, 52 FR 2923.

Dated: January 27, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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